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**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

WILLIAM POSNER
1008 C Ocean Lane
Imperial Beach, CA 91932

Physical Therapy License No. 14754

Respondent.

Case No. ID-2000-62612

OAH No. L-2004030169

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Physical Therapy Board, Department of Consumer Affairs, State of California (hereinafter "Board"), the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical Therapy Board of California. Complainant brought this action solely in his official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Samuel K. Hammond, Deputy Attorney General.

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2. Respondent WILLIAM POSNER (Respondent) is represented in this proceeding by attorneys Sheila S. Trexler, Esq. and Tamara L. Glaser, Esq., whose address is Neil, Dymott, Perkins, Brown & Frank, 1010 Second Avenue, Suite 2500, San Diego, CA 92101-4906

3. On or about January 15, 1988, the Physical Therapy Board of California issued Physical Therapy License No. 14754 to WILLIAM POSNER (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. ID-2000-62612 and will expire on April 30, 2005, unless renewed.

JURISDICTION

4. Accusation No. ID-2000-62612 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 14, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. ID-2000-62612 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. ID-2000-62612. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 8. For the purpose of this stipulated settlement only, Respondent admits he
3 engaged in inappropriate conduct in violation of Code sections 726 and 2234 with respect to
4 Accusation No. ID-2000-62612.

5 9. Respondent agrees that his Physical Therapy License is subject to
6 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
7 Disciplinary Order below.

8 RESERVATION

9 10. The admissions made by Respondent herein are only for the purposes of
10 this proceeding, or any other proceedings in which the Board or other professional licensing
11 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

12 CONTINGENCY

13 11. The parties understand and agree that facsimile copies of this Stipulated
14 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
15 force and effect as the originals.

16 12. In consideration of the foregoing admissions and stipulations, the parties
17 agree that the Board may, without further notice or formal proceeding, issue and enter the
18 following Disciplinary Order:

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Physical Therapy License No. 14754 issued to
21 Respondent WILLIAM POSNER (Respondent) is revoked. However, the revocation is stayed
22 and Respondent is placed on probation for three (3) years on the following terms and conditions.

23 1. PSYCHIATRIC/PSYCHOLOGICAL EVALUATION AND
24 TREATMENT:

25 Within 30 days of the effective date of this decision, and on a periodic basis
26 thereafter as may be required by the Board or its designee, Respondent shall undergo a
27 psychiatric/psychological evaluation (and psychological testing, if deemed necessary) by a
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1 Board-appointed psychiatrist/psychologist, who shall furnish an evaluation report to the Board or
2 it designee. Respondent shall pay the cost of the psychiatric/psychological evaluation.

3 If based on the recommendation of the Board-appointed psychiatrist/psychologist
4 Respondent is required by the Board or its designee to undergo psychiatric/psychological
5 treatment, Respondent shall within 30 days of the requirement submit to the Board for its prior
6 approval the name and qualifications of a psychiatrist/psychologist of Respondent's choice.
7 Respondent shall undergo and continue psychiatric/psychological treatment until further notice
8 from the Board or its designee. Respondent shall have the treating psychiatrist/psychologist
9 submit quarterly status reports to the Board or its designee indicating whether the Respondent is
10 capable of practicing physical therapy safely.

11 2. RESTRICTION OF PRACTICE - HOME CARE:

12 (a) Respondent shall not engage in the home care practice of physical
13 therapy until notified by the board or its designee that the evaluating
14 psychiatrist/psychologist has determined Respondent is safe to resume home care
15 practice of physical therapy.

16 (b) In any event, Respondent shall not provide home care physical therapy
17 services to any female patient during the period of probation.

18 (c) During the period of probation, Respondent may provide home care physical
19 therapy to male patients provided, however, that Respondent shall not provide any
20 physical therapy training or demonstrations to any female person(s) in the home, and
21 Respondent is prohibited from coming into physical contact with or touching any female
22 person(s) in the home. This restriction shall not prohibit Respondent from hand-
23 delivering written physical therapy training manuals or instructions to female
24 person(s) in the home, and shall not prohibit Respondent from providing to such female
25 person(s) verbal physical therapy care instructions that supplement or explain the written
26 training manual or instructions.

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1 3. RESTRICTION OF PRACTICE - THIRD PARTY PRESENCE
2 (IN NON- HOME CARE SETTING): During probation, Respondent may
3 examine or provide physical therapy care to female patients in facilities or clinics or at sites
4 which are not the homes of patients, provided, however, that said examination or treatment of
5 female patients shall be performed in the presence of a third party. (This provision does not
6 permit Respondent to provide home care physical therapy to female patients.) Respondent shall
7 submit to the Board or its designee, the names of the persons who acted as third party present
8 within 5 days of providing physical therapy services to female patients at such facilities or
9 clinics. The Respondent shall execute a release authorizing the third party present to divulge
10 any information that the Board may request during interviews by the probation monitor on a
11 periodic basis. The persons acting in the role of the third party present shall be provided with a
12 copy of the accusation and decision and order.

13 4. RESTRICTION OF PRACTICE - NO EMPLOYMENT OR
14 SUPERVISION OF PHYSICAL THERAPY STUDENT INTERNS: Respondent shall not
15 supervise any physical therapy student interns during the entire period of probation. Respondent
16 shall terminate any such supervisorial relationship in existence on the effective date of this
17 probation.

18 5. RESTRICTION OF PRACTICE - NO EMPLOYMENT OR
19 SUPERVISION OF PHYSICAL THERAPIST LICENSE APPLICANTS, PHYSICAL
20 THERAPIST ASSISTANT APPLICANTS, PHYSICAL THERAPIST ASSISTANTS, OR
21 PHYSICAL THERAPY AIDES: Respondent shall not supervise any physical therapist license
22 applicants, physical therapist assistant applicants, physical therapist assistants, or physical
23 therapy aides during the entire period of probation. Respondent shall terminate any such
24 supervisorial relationship in existence on the effective date of this probation.

25 6. NOTIFICATION OF PROBATIONAL STATUS TO REFERRAL
26 AGENCIES/REGISTRIES: Respondent shall notify all referral agencies or registries from
27 whom Respondent obtains patients or clients of the reason for and the terms and conditions of
28 the probation by providing a copy of the Accusation and the stipulated settlement and

disciplinary order to the agency/registry. Respondent shall obtain written confirmation from the agency that the documents were received. The notification(s) shall include the name, address and phone number of the agency, and, if different, the name, address and phone number of the work location.

7. PROBATION MONITORING COSTS: All costs incurred by the Board for probation monitoring during the entire period of probation shall be reimbursed by Respondent. Respondent will be billed at least quarterly. Failure to make the ordered reimbursement within 60 days of the billing shall constitute a violation of the probation order. In addition to the filing of an Accusation or the issuance of an administrative citation, the filing of criminal charges shall be sought when appropriate.

8. COST RECOVERY Respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$8,000. The Board, however, agrees to accept as full costs payment, the amount of \$6,000 if and only if, Respondent pays the \$6,000 within 90 days of the effective date of this decision. If Respondent fails to pay the \$6,000 within 90 days of the effective date of the decision, the entire \$8,000 is deemed due and payable immediately. The filing of bankruptcy or a period of non practice by Respondent shall not relieve Respondent of his obligation to reimburse the Board for its investigative and prosecution costs. Failure to make the ordered reimbursement, or any agreed upon payment, may constitute a violation of the probation order.

9. OBEY ALL LAWS: Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.

10. COMPLIANCE WITH ORDERS OF A COURT: Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court may constitute a violation of probation.

11. QUARTERLY REPORTS: Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

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12. PROBATION MONITORING PROGRAM COMPLIANCE: Respondent shall comply with the Board's probation monitoring program.

13. INTERVIEW WITH THE BOARD OR ITS DESIGNEE: Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.

14. NOTIFICATION OF PROBATIONAL STATUS TO EMPLOYERS The Respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the Accusation and the stipulated settlement and disciplinary order to the employer. The Respondent shall obtain written confirmation from the employer that the documents were received. If the Respondent changes employment or obtains additional employment, the Respondent shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

15. NOTIFICATION OF CHANGE OF NAME OR ADDRESS: The Respondent shall notify the Board, in writing, of any and all changes of name or address within ten (10) days.

16. PROHIBITED USE OF ALIASES: Respondent may not use aliases and shall be prohibited from using any name which is not his legally-recognized name or based upon a legal change of name.

17. WORK OF LESS THAN 20 HOURS PER WEEK: If the Respondent works less than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The Respondent shall notify the Board if him works less than 192 hours in a three month period.

18. TOLLING OF PROBATION: The period of probation shall run only during the time Respondent is practicing within the jurisdiction of California. If, during probation, Respondent does not practice within the jurisdiction of California, Respondent is required to immediately notify the probation monitor in writing of the date that Respondent's

1 practice is out of state, and the date of return, if any. Practice by the Respondent in California
2 prior to notification to the Board of the Respondent's return will not be credited toward
3 completion of probation. Any order for payment of cost recovery shall remain in effect whether
4 or not probation is tolled.

5 19. VIOLATION OF PROBATION If Respondent violates probation in any
6 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
7 probation and carry out the disciplinary order that was stayed. If an accusation or petition to
8 revoke probation is filed against Respondent during probation, the Board shall have continuing
9 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
10 is final.

11 20. CESSATION OF PRACTICE DUE TO RETIREMENT, HEALTH OR
12 OTHER REASONS: Following the effective date of this probation, if Respondent ceases
13 practicing physical therapy due to retirement, health or other reasons, Respondent may request to
14 surrender his license to the Board. The Board reserves the right to evaluate the Respondent's
15 request and to exercise its discretion whether to grant the request or to take any other action
16 deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the
17 tendered license, the terms and conditions of probation shall be tolled until such time as the
18 license is no longer renewable, the Respondent makes application for the renewal of the tendered
19 license or makes application for a new license.

20 21. COMPLETION OF PROBATION: Upon successful completion of
21 probation, Respondent's license or approval shall be fully restored.

22 22. WRITTEN EXAM ON THE LAWS & REGULATIONS GOVERNING
23 THE PRACTICE OF PHYSICAL THERAPY: Within 90 days of the effective date of this
24 decision, Respondent shall take and pass the Board's written examination on the laws and
25 regulations governing the practice of physical therapy in California. If Respondent fails to pass
26 the examination, Respondent shall be suspended from the practice of physical therapy until a
27 repeat examination has been successfully passed.

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1 23. PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE
2 ON PROBATION It is not contrary to the public interest for the Respondent to practice physical
3 therapy under the probationary conditions specified in the disciplinary order.

4 ACCEPTANCE

5 I have carefully read the above Stipulated Settlement and Disciplinary Order and
6 have fully discussed it with my attorneys, Sheila S. Trexler, Esq. and Tamara L. Glaser, Esq. I
7 understand the stipulation and the effect it will have on my Physical Therapy License. I enter
8 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
9 and agree to be bound by the Decision and Order of the Board.

10 DATED: 05/07/2004.

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12 Original Signed By:
13 WILLIAM POSNER (Respondent)
14 Respondent

15 I have read and fully discussed with Respondent WILLIAM POSNER the terms
16 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
17 Order. I approve its form and content.

18 DATED: 05/07/2004.

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21 Original Signed By:
22 SHEILA S. TREXLER, ESQ.

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24 Original Signed By:
25 TAMARA L. GLASER, ESQ.
26 Attorney for Respondent
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physical Therapy Board, Department of Consumer affairs, State of California.

DATED: 05/07/2004.

BILL LOCKYER, Attorney General
of the State of California

Original Signed By:
SAMUEL K. HAMMOND
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2001AD0220
Posner, W. Decision.wpd

Exhibit A

Accusation No. ID- 2000-62612

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA**

In the Matter of the Accusation Against:

WILLIAM POSNER
1008 C Ocean Lane
Imperial Beach, CA 91932

Physical Therapy License No. 14754

Respondent.

Case No. ID-2000-62612

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, as its Decision in this matter.

This Decision shall become effective on 06/13/2004.

It is so ORDERED 05/13/2004.

Original Signed By: Donald Chu, PhD, PT, President
FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA